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CYBERSitter, LLC d/b/a Solid Oak Software

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

CYBERSitter, LLC, a California limited liability company, d/b/a Solid Oak Software,

Plaintiff,

v.

The People's Republic of China, a foreign state; Zhengzhou Jinhui Computer System Engineering Ltd., a Chinese corporation; Beijing Dazheng Human Language Technology Academy Ltd., a Chinese corporation; Sony Corporation, a Japanese corporation; Lenovo Group Limited, a Chinese corporation; Toshiba Corporation, a Japanese corporation; ACER Incorporated, a Taiwanese corporation; ASUSTeK Computer Inc., a Taiwanese corporation; BenQ Corporation, a Taiwanese corporation; Haier Group Corporation, a Chinese corporation; DOES 1-10, inclusive,

Defendants.

CASE NO. CV10-0038 JST(SHx)

**FIRST AMENDED COMPLAINT  
FOR MISAPPROPRIATION OF  
TRADE SECRETS; UNFAIR  
COMPETITION; COPYRIGHT  
INFRINGEMENT; AND CIVIL  
CONSPIRACY**

**DEMAND FOR JURY TRIAL**

**FIRST AMENDED COMPLAINT**

1 Plaintiff CYBERsitter, LLC d/b/a Solid Oak Software ("Solid Oak" or  
2 "Plaintiff") alleges, on information and belief, as follows:

3 **NATURE OF THE ACTION**

4 1. This action arises from one of the largest cases of software piracy in  
5 history, wherein two Chinese companies, backed by the Chinese government, stole  
6 approximately 3,000 lines of code from a small American company's software  
7 program, and disseminated it to tens of millions of end users in China with the willing  
8 participation of computer manufacturers who chose to turn a blind eye to the illegal  
9 and otherwise surreptitious nature of the pirated program in order to gain increased  
10 access to the vast Chinese market by participating in the Chinese government-led  
11 initiative to proliferate the illegal program throughout China (the "Green Dam  
12 Initiative").

13 2. Solid Oak is a small family-owned software company based in Santa  
14 Barbara, California. Solid Oak developed and marketed an award-winning Internet  
15 content filtering program called CYBERsitter, which was designed to help parents  
16 protect their children from viewing inappropriate pornographic and violent content on  
17 the Web. CYBERsitter was the first commercially available Internet content filter,  
18 and it has been continuously published by Solid Oak for over 14 years. Solid Oak  
19 now boasts over 2.4 million active CYBERsitter users worldwide, including  
20 thousands of businesses, individuals, and schools in China, and thousands more in  
21 other Chinese-speaking countries.

22 3. The Defendants in this action include the People's Republic of China  
23 ("PRC"), two Chinese software development companies, and several of the largest  
24 computer manufacturers in the world. As relevant here, the Chinese software  
25 developers, in collaboration with the Chinese government, purported to design an  
26 Internet content filtering program known as Green Dam Youth Escort ("Green Dam").  
27 Like CYBERsitter, the Green Dam program was allegedly designed to block  
28 pornographic and violent Internet content from children. Unlike CYBERsitter,

1 however, the Green Dam program was found to contain filters to block political and  
2 religious content expressing views that differed from those of the Chinese  
3 government. The program was also found to have serious security vulnerabilities that  
4 would allow third parties to monitor or take control of the computers on which it was  
5 installed. As a result, the Green Dam program and the Chinese government's efforts  
6 to proliferate the program throughout China were met with stiff opposition from  
7 human rights groups in China and around the world. The central component of the  
8 Green Dam Initiative was for the PRC to convince and incentivize computer  
9 manufacturers to participate in the Initiative by including the Green Dam software  
10 with their computers sold in China. The Defendant computer manufacturers named  
11 herein willingly participated in this plan.

12 4. In June 2009, a group of independent researchers at the University of  
13 Michigan confirmed that the Green Dam developers had copied verbatim nearly 3,000  
14 lines of code from the CYBERSitter program and incorporated it into the Green Dam  
15 program. The stolen materials include the heart of the CYBERSitter software: its  
16 proprietary content filters. The Chinese government has issued Green Dam usage  
17 figures reporting – as of early June 2009 – that over 53 million computers marketed  
18 for home use had been sold with the Green Dam program, that the Green Dam  
19 program had been installed on more than half a million computers in Chinese schools,  
20 and that Green Dam had been downloaded by users from the Internet an additional  
21 3.27 million times.

22 5. The Defendants in this action have conspired together to steal Solid Oak's  
23 proprietary software, and to disseminate the illegal product to tens of millions of end  
24 users in China and elsewhere. The Defendants met together at a PRC-sponsored  
25 Green Dam Symposium at the Beijing offices of the PRC's Ministry of Industry and  
26 Information Technology ("MIIT") in March 2009 to develop their common plan. The  
27 Defendants' common scheme – the Green Dam Initiative – involved two overlapping  
28 components which eventually became indistinguishable from each other: participation

1 in the Chinese government's seemingly legal (albeit surreptitious) plan to proliferate  
2 the Green Dam program throughout China, and the illegal theft, infringement,  
3 exploitation and distribution of Plaintiff's intellectual property. Each of the  
4 Defendants herein willingly participated in this common scheme both before and after  
5 the illegal aspects of the scheme became apparent.

6 6. Defendant computer manufacturers derive significant financial benefits  
7 from their unauthorized distribution of Plaintiff's intellectual property to the vast  
8 Chinese market, and have willingly participated in the scheme of the Defendant  
9 developers and the Chinese government to proliferate the illegal Green Dam product  
10 throughout China and elsewhere. The Defendant computer manufacturers had the right,  
11 ability, legal obligation and knowledge to prevent unauthorized copies of Plaintiff's  
12 works from being distributed on their computers. But although the Defendant computer  
13 manufacturers vigorously defend their own intellectual property in the courts and in the  
14 press, they chose to turn a blind eye to the theft and infringement at issue here in order to  
15 continue to reap the financial rewards of exploiting the vast Chinese computer market.

16 7. By their actions alleged herein, Defendants have conspired together to  
17 misappropriate Plaintiff's trade secrets under California law, have violated federal  
18 prohibitions on theft of trade secrets and economic espionage (constituting unlawful  
19 practices under California's Unfair Competition Law), and have violated Plaintiff's  
20 copyrights in the CYBERSitter program, both directly and indirectly, under applicable  
21 copyright laws of the United States, China, Japan and Taiwan. Because each Defendant  
22 named herein willingly participated in the illegal elements of their common scheme, each  
23 Defendant is liable for the illegal acts of the others.

24 8. As a result of Defendants' acts alleged herein, Plaintiff has been damaged in  
25 an amount to be determined at trial. Plaintiff estimates its damages to be  
26 \$2,257,175,000, representing the Chinese government's stated figures of more than  
27 56.5 million unauthorized copies distributed in China alone as of early June 2009,  
28

1 multiplied by \$39.95 per copy (the price of purchasing a legal copy of the  
2 CYBERSitter program from Solid Oak).

### 3 JURISDICTION AND VENUE

4 9. This Court has subject matter jurisdiction over this action pursuant to 28  
5 U.S.C. §§ 1330, 1331, 1332(a), 1338 and 1367. This action seeks relief, *inter alia*,  
6 for violations of the United States Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and for  
7 unfair competition predicated on violations of the Economic Espionage Act, 18 U.S.C.  
8 §§ 1831-32 (theft of trade secrets and economic espionage). As stated in paragraphs  
9 12 through 26 below, for purposes of diversity jurisdiction, Solid Oak is a citizen of  
10 the State of California, and Defendants are citizens of the People's Republic of China,  
11 Japan, and Taiwan. The amount in controversy exceeds the sum of \$75,000 exclusive  
12 of interest and costs.

13 10. This Court has personal jurisdiction over Defendant PRC, Defendant  
14 Jinhui, and Defendant Dazheng because they have purposefully availed themselves of  
15 the benefits of this forum by doing business in this District, by committing wrongful  
16 acts in whole or in part within this District, and/or by committing wrongful acts which  
17 have had direct effects in this District. Because Defendant PRC's wrongful acts  
18 alleged herein arise in connection with a commercial activity that causes a direct  
19 effect in the United States, Defendant PRC comes within an express exception to the  
20 Foreign Sovereign Immunities Act, *viz.*, 28 U.S.C. § 1605(a)(2). This Court has  
21 personal jurisdiction over the remaining Defendants because they conduct significant  
22 business in this District, and sell their computers throughout the United States in their  
23 own capacity and through their wholly-owned subsidiaries.

24 11. Venue is proper in the Central District of California pursuant to 28  
25 U.S.C. § 1391(b)(2).

### 26 THE PARTIES

27 12. Plaintiff Solid Oak is a limited liability company organized and existing  
28 under the laws of the State of California, with its principal place of business in Santa

1 Barbara, California. Solid Oak is engaged in the business of software development  
2 and sales. As relevant here, Solid Oak developed and sells an Internet content  
3 filtering program known as "CYBERsitter."

4 13. Defendant People's Republic of China ("PRC") is a foreign state. As  
5 relevant here, PRC has engaged in the purely economic conduct of licensing,  
6 sublicensing, distributing and promoting the software program known as Green Dam  
7 at issue in this litigation. PRC may not claim jurisdictional immunity from this suit as  
8 its conduct arises from commercial activity that "causes a direct effect in the United  
9 States" as described in 28 U.S.C. § 1605(a)(2) in the form of damaging Solid Oak, a  
10 California company, by PRC's unauthorized taking and use of Solid Oak's intellectual  
11 property. The PRC's actions alleged herein are purely economic because PRC  
12 purchased a one-year license to exploit the software program at issue for  
13 approximately 6.9 million U.S. dollars, and then promoted the program and  
14 sublicensed the program to computer manufacturers, for which it received substantial  
15 sums.

16 14. Defendant Zhengzhou Jinhui Computer System Engineering Ltd.  
17 ("Jinhui") is a corporation organized and existing under the laws of the People's  
18 Republic of China, with its principal place of business in Zhengzhou, China. As  
19 relevant here, Jinhui is in the business of developing and distributing software  
20 products – in particular, the Green Dam program at issue in this litigation.

21 15. Defendant Beijing Dazheng Human Language Technology Academy Ltd.  
22 ("Dazheng") is a corporation organized and existing under the laws of the People's  
23 Republic of China, with its principal place of business in Beijing, China. As relevant  
24 here, Dazheng is in the business of developing and distributing software products – in  
25 particular, the Green Dam program at issue in this litigation.

26 16. Defendant Sony Corporation ("Sony") is a corporation organized and  
27 existing under the laws of Japan, with its principal place of business in Tokyo, Japan.  
28 As relevant here, Sony is engaged in the business of manufacturing and distributing



1 personal computers and related products, in the United States, China, and elsewhere  
2 around the world. Sony operates and does business throughout the United States  
3 through its wholly-owned subsidiary, Sony Corporation of America. Sony has taken a  
4 strong public stance on the importance of the protection and vigorous enforcement of  
5 its own intellectual property rights.

6 17. Defendant Lenovo Group Limited ("Lenovo") is a corporation organized  
7 and existing under the laws of the People's Republic of China, with its principal place  
8 of business in Beijing, China. As relevant here, Lenovo is engaged in the business of  
9 manufacturing and distributing personal computers and related products, in the United  
10 States, China, and elsewhere around the world. Lenovo operates and does business  
11 throughout the United States. In May 2005, Lenovo purchased IBM's Personal  
12 Computing Division. As part of this purchase, Lenovo agreed to relocate its PC  
13 business headquarters from Beijing to the United States. Lenovo's principal office is  
14 currently located in Morrisville, North Carolina.

15 18. Defendant Toshiba Corporation ("Toshiba") is a corporation organized  
16 and existing under the laws of Japan, with its principal place of business in Tokyo,  
17 Japan. As relevant here, Toshiba is engaged in the business of manufacturing and  
18 distributing personal computers and related products, in the United States, China, and  
19 elsewhere around the world. Toshiba operates and does business throughout the  
20 United States through its wholly-owned subsidiary, Toshiba America, Inc.

21 19. Defendant ACER Incorporated ("Acer") is a corporation organized and  
22 existing under the laws of Taiwan, with its principal place of business in Taipei,  
23 Taiwan. As relevant here, Acer is engaged in the business of manufacturing and  
24 distributing personal computers and related products, in the United States, China, and  
25 elsewhere around the world. Acer operates and does business throughout the United  
26 States through its wholly-owned subsidiaries, Acer America Corporation and  
27 Gateway, Inc.

1           20. Defendant ASUSTeK Computer Inc. ("Asus") is a corporation organized  
2 and existing under the laws of Taiwan, with its principal place of business in Taipei,  
3 Taiwan. As relevant here, Asus is engaged in the business of manufacturing and  
4 distributing personal computers and related products, in the United States, China, and  
5 elsewhere around the world. Asus operates and does business throughout the United  
6 States through its wholly-owned subsidiary, Asus Computer International.

7           21. Defendant BenQ Corporation ("BenQ") is a corporation organized and  
8 existing under the laws of Taiwan, with its principal place of business in Taipei,  
9 Taiwan. As relevant here, BenQ is engaged in the business of manufacturing and  
10 distributing personal computers and related products, in the United States, China, and  
11 elsewhere around the world. BenQ operates and does business throughout the United  
12 States, including under the marks "BenQ," "Joybook," and "Joybee."

13           22. Defendant Haier Group Corporation ("Haier") is a corporation organized  
14 and existing under the laws of the People's Republic of China, with its principal place  
15 of business in Qingdao, China. As relevant here, Haier is engaged in the business of  
16 manufacturing and distributing personal computers and related products, in the United  
17 States, China, and elsewhere around the world. Haier operates and does business  
18 throughout the United States through its wholly-owned subsidiary, Haier America.

19           23. The true names and capacities, whether individual, corporate, associate or  
20 otherwise, of Defendants sued herein as Does 1 through 10, inclusive, are unknown at  
21 the present time and Plaintiff therefore sues said Does and each of them by such  
22 fictitious names. If necessary, Plaintiff will seek leave of Court to amend this  
23 complaint to allege their true names and capacities when they are ascertained.

24           24. Unless otherwise indicated herein, on information and belief, each of  
25 Does 1 through 10, inclusive, participated in the activities described herein and  
26 rendered material assistance to the other Defendants in the actions alleged herein,  
27 conspired and agreed with and aided and abetted one or more of the other Defendants,  
28 and at all relevant times each of the Defendants was the principal or agent, alter ego,



1 partner, joint venturer, co-venturer, co-conspirator, independent contractor, servant  
2 and/or employee of at least one other of the other Defendants, and all of the acts  
3 performed by them or omissions alleged herein were made in the course and scope of  
4 their employment, agency, partnership, joint venture, conspiracy or other such  
5 relationship and with knowledge, consent, approval and/or ratification of the  
6 principals, and each of them. Unless otherwise indicated herein, each of the parties  
7 herein named as Does 1 through 10 are responsible in some manner or fashion, and  
8 are by contract or otherwise, the successor, assign, joint venturer, co-venturer, co-  
9 conspirator, partner or alter ego of one or more of the Defendants, or was otherwise  
10 involved with the other Defendants in the wrongdoing alleged herein, and by virtue of  
11 such capacity, assumed the obligations herein owed by Defendants, and is liable and  
12 responsible for the damages on the facts alleged herein and for all the relief sought.

13 25. Unless otherwise indicated herein, on information and belief, there has  
14 existed at all relevant times, a unity of interest and ownership between each of the  
15 Does 1 through 10 named herein, and at least one or more of the Defendants, such that  
16 any individuality and separateness between them has ceased and each is the "alter  
17 ego" of the other, and that adherence to the fiction of the separate existence of each  
18 Doe Defendant as an entity or individual distinct from one or more of the Defendants  
19 would therefore permit an abuse of the corporate privilege and would sanction fraud  
20 and promote injustice.

21 26. Unless otherwise indicated herein, on information and belief, there has  
22 existed at all relevant times a joint venture between each of the Does 1 through 10  
23 named herein, and at least one or more of the Defendants, such that each of the Does 1  
24 through 10 and at least one or more of the Defendants shared a common business  
25 interest, shared control, profits and losses arising from such common business  
26 interests, and therefore are liable and responsible for the damages on the facts alleged  
27 herein and for all relief sought.  
28

**GENERAL ALLEGATIONS**

**Solid Oak's CYBERSitter**

27. Solid Oak is a family-owned software company based in Santa Barbara, California, that manufactures an Internet filtering software program known as "CYBERSitter." This product was designed to help parents protect their children from viewing inappropriate pornographic and violent content on the Web. CYBERSitter was the first commercially available Internet filter. It has been continuously published by Solid Oak for over 14 years. CYBERSitter has won numerous awards, including winning *PC Magazine's* prestigious Editor's Choice Award five times. Solid Oak now boasts over 2.4 million active CYBERSitter users worldwide, including thousands of businesses, individuals, and schools in China, and thousands more in other Chinese-speaking countries. CYBERSitter is sold on Solid Oak's website, [www.CYBERSitter.com](http://www.CYBERSitter.com), for \$39.95 per copy.

28. CYBERSitter operates by using a complex and unique series of Internet content filters. These content filters (also referred to herein as "Trade Secrets") are proprietary code, which is encrypted in order to prevent its disclosure to third parties and competitors. They have been developed and refined by Solid Oak over many years, and are the key to the Internet filtering aspect of the program. Solid Oak's filters are constantly updated, and updates are made available at no cost to those who have purchased the CYBERSitter program. This Internet filtering component is the centerpiece of the program.

29. Designing a content filter is an art and involves significant creativity. There are many distinctive ways for different programmers to construct these filters in order to achieve the same function. CYBERSitter's content filters are Solid Oak's unique expression, and any copying of these filters goes to the heart of the program and takes the central expressive feature that distinguishes CYBERSitter from its competitors.

Green Dam and Its Developers

30. Green Dam Youth Escort, like CYBERSitter, is an Internet content management program that uses content filters to block undesired content. Green Dam was developed by two Chinese companies: Zhengzhou Jinhui Computer System Engineering Ltd. and Beijing Dazheng Human Language Technology Academy Ltd. Green Dam was developed with the backing and support of the Chinese government. In 2004, the Green Dam project received 3 million Yuan in government investment funds.

31. Jinhui was founded in 1997. Jinhui is officially listed as a private company, but its principal shareholders include government-backed corporations and its researchers have close ties with the military research division of the Information Engineering University ("IEU"), one of a handful of military academies run by the People's Liberation Army.

32. Dazheng was founded in 2000. Dazheng (which also operates under the name "HNC Institute") is officially listed as a private company, but works closely with several Chinese government Ministries and Commissions. In 2003, Dazheng developed its first publicly-announced software program called the "Falun Gong Concept Censorship System." As the name suggests, the program was designed to censor Internet content related to the Falun Gong, a religious group banned by the Chinese government. The program was found to have serious flaws that caused constant crashing on the computers on which it was installed.

The Green Dam Initiative

33. On January 21, 2008, the PRC announced an "open bidding" process for companies purportedly to compete for a one-year contract for content-filtering software to be used by the PRC. On January 25 – just four days after the bidding began – the bidding process was abruptly closed. The PRC then allowed Jinhui and Dazheng, the makers of Green Dam, to set the standards for evaluating the software

1 bids, and to conduct the testing of the competing software products. Not surprisingly,  
2 the winner of this "open bidding" process was Green Dam. The PRC initially paid  
3 Jinhui and Dazheng a sum of 47.1 million Yuan (approximately 6.9 million U.S.  
4 dollars) for a one-year license to distribute the Green Dam program. The PRC then  
5 charged substantial license fees to computer manufacturers and others for use of the  
6 Green Dam program.

7 34. Pursuant to this license, Defendant PRC has made the Green Dam  
8 program available for free downloading worldwide on the Internet, including on its  
9 own official site, as well as on many other privately owned Internet sites. Defendants  
10 Jinhui and Dazheng also made the program available for download from websites that  
11 they own or control. The PRC has encouraged downloading of the program by  
12 Chinese speakers worldwide, including through propaganda. The Chinese  
13 government's official Green Dam site contains or contained links targeting users in  
14 "San Francisco" and "New York" – the locations of the two largest Chinese-speaking  
15 populations in the United States.

16 35. On February 1, 2009, the PRC expanded an existing program known as  
17 the "Rural Subsidy Program" ("Program") – which was originally designed to make  
18 household items such as televisions, refrigerators, and cell phones available to rural  
19 Chinese families at significantly below market price – to include home computers  
20 made by certain designated suppliers. In order to participate in the Program, computer  
21 suppliers were required to submit an application to the PRC and agree to abide by all  
22 of the terms and preconditions of the Program. In return, the PRC has made available  
23 a vast and captive market of over 800 million rural residents to the Program's  
24 exclusive designated suppliers. As a precondition of participation in the Program, the  
25 government required that computers sold in the Program must have Green Dam pre-  
26 installed on them, or must be accompanied by a disk containing the Green Dam  
27 software. Defendants Lenovo, Acer, Asus, BenQ and Haier are among the select  
28

1 group of computer manufacturers that applied and were accepted as designated  
2 suppliers for the Program.

3 36. On May 19, 2009, the PRC's MIIT issued a directive mandating that by  
4 July 1, 2009 every computer shipped to or sold in China must have the Green Dam  
5 software pre-installed on or packaged with the computer. The stated purpose of the  
6 directive was to "build a healthy and harmonious online environment that does not  
7 poison young people's minds." The directive also required computer suppliers to  
8 report sales information to the MIIT, including the number of computers sold or  
9 shipped with the Green Dam software. Also in May 2009, MIIT ordered Green Dam  
10 to be installed on every computer in every primary and secondary school in China.

11 37. The Green Dam Initiative was met with condemnation from international  
12 human rights groups and activists within China. These groups, while agreeing with  
13 the stated goal of keeping pornography away from minors (as the CYBERSitter filters  
14 were designed to do), viewed the Green Dam Initiative as a thinly-veiled attempt to  
15 expand political and religious censorship. Researchers in China reported that Green  
16 Dam contains over 6,500 political keyword filters, including keywords related to the  
17 Chinese occupation of Tibet, the 1989 Tiananmen Square massacre, and the  
18 government-banned Falun Gong religious group. This is more than double the  
19 number of pornography-related keyword filters in the program.

20 38. On June 30, 2009 – the day before the mandate was to take effect – the  
21 MIIT announced that it was delaying implementation of the mandatory pre-installation  
22 of Green Dam on computers. On August 12, 2009, China issued a statement saying  
23 that it did not intend to reinstate the mandate. Nevertheless, Green Dam continues to  
24 be distributed throughout China and to Chinese speakers throughout the world, and  
25 the PRC continues to promote proliferation of the Green Dam program by both formal  
26 and informal means.

Unauthorized Copying and Exploitation of CYBERSitter Content Filters

39. On June 11, 2009, an independent team of researchers in the computer science department at the University of Michigan issued a report analyzing the Green Dam program ("Michigan Report"). In less than 12 hours of testing, the Michigan team found "serious security vulnerabilities" in the Green Dam program, including "remotely-exploitable vulnerabilities" whereby "[a]ny website a Green Dam user visits can take control of the PC." Researchers also found that the program makes possible remote monitoring of a computer user's activities, not limited to activities on the Internet.

40. The Michigan Report also concluded that Green Dam had copied verbatim portions of Solid Oak's CYBERSitter program. The most significant and troubling aspect of this copying was the copying of CYBERSitter's proprietary content filters.

41. In addition to the verbatim copying of the CYBERSitter content filters, researchers also discovered a "smoking gun" file. The smoking gun file is a file containing two CYBERSitter announcements, dated May 4 and May 10, 2004, respectively. The first is a simple announcement to CYBERSitter customers: "CYBERSitter Version 9 released. This is a free upgrade and is available at: <http://www.getcybersitter.com>." The second warns CYBERSitter users of the dangers of Spyware. It urges users to install a Spyware checker, and directs users to the CYBERSitter website for further information on this issue. This smoking gun file was apparently copied because it has a file extension similar to that of the content filters. Despite the fact that this file obviously has no functional role in the Green Dam program, it was directly copied from the CYBERSitter program and incorporated into the Green Dam program along with the CYBERSitter content filters.

42. In total, the version of Green Dam tested by researchers at the University of Michigan contains 2,972 lines of code identical to CYBERSitter code.



1           43. Numerous subsequent versions of and updates to Green Dam have been  
2 released since the Michigan Report. Testing of subsequent versions and updates to  
3 Green Dam show that the CYBERSitter filters remain active, and the most current  
4 version of Green Dam makes active use of CYBERSitter's content filters. Subsequent  
5 testing also indicates that the removal of the CYBERSitter content filters from the  
6 program (as opposed to merely deactivating them) causes Green Dam to lose content-  
7 filtering capability altogether, rendering it possible for users to access even the most  
8 well-known pornographic websites. This suggests that CYBERSitter files are integral  
9 to the basic functioning of the Green Dam program and its ability to filter content.

10           Green Dam Facts and Figures

11           44. Green Dam continues to be aggressively marketed and disseminated  
12 throughout China by the PRC and the Chinese software developers, both by formal  
13 and informal means. As of June 8, 2009, the PRC reported that from the end of  
14 March 2009 through early June 2009 over 53 million computers marketed for home  
15 use had been sold in China with the Green Dam program. The government also  
16 reported that more than 2,000 schools in China had installed Green Dam on more than  
17 half a million computers during that period. By some estimates, the number of  
18 computers equipped with Green Dam in Chinese schools was expected to top 4  
19 million by the end of June 2009. In addition, as of early June 2009, Green Dam had  
20 been downloaded from Internet sites over 3 million times.

21           45. The PRC paid the developers of Green Dam the equivalent of 6.9 million  
22 U.S. dollars for a one-year license to distribute the software. Using the PRC's figures  
23 for less than three months of distribution on home computers alone, this would  
24 amount to a mere 13 cents per copy. This figure does not represent a fair market price  
25 for a commercial software license arrived at through an arms-length bargaining  
26 process. Moreover, the license price does not account for the substantial additional  
27 financial benefits that Jinhui and Dazheng expected to reap from the PRC-promoted  
28

1 proliferation of the program. Indeed, due to update fees and other fees that the makers  
2 expected to collect for the continued use of Green Dam after expiration of the one-  
3 year governmental license period, Jinhui stated publicly that it expected its revenues  
4 from the program to top 3 billion Yuan (nearly half a billion U.S. dollars) in 2010. In  
5 addition, the PRC has collected substantial sums, in an amount to be determined at  
6 trial, in sublicensing fees from computer manufacturers and others.

7 46. The proliferation of Green Dam is not limited to China. It is available for  
8 free download to Chinese speakers through the world. On information and belief,  
9 many thousands of downloads of Green Dam have occurred in the United States,  
10 including thousands of downloads in the state of California. Defendants PRC, Jinhui,  
11 and Dazheng have made the Green Dam program available for download on their  
12 official websites, and have authorized numerous other Internet sites to offer the  
13 program for download. Chinese speakers outside of China, including in the United  
14 States, have been encouraged to download the program through propaganda, including  
15 in promotional materials on the PRC's website. As stated above, the PRC's official  
16 Green Dam site contains or contained links specifically targeting users in San  
17 Francisco and New York.

18 Unlawful Attempts to Gain Access to Solid Oak Servers and Computers

19 47. In addition to the illegal copying and distribution of Solid Oak's  
20 intellectual property, there have been numerous unlawful attempts to gain access to  
21 Solid Oak's computers and servers originating from within China. Solid Oak has  
22 discovered several thousand individual attempts to gain administrative access to Solid  
23 Oak's servers originating from China. Each of these intrusions involved between 20  
24 and 3,000 attempts at access per session. If successful, gaining administrative access  
25 would allow a perpetrator to access all of Solid Oak's information stored on its servers  
26 (including its content filters), and to appropriate and alter or delete this information.  
27 At least one such intrusion, on May 31, 2009, originated from within the PRC  
28

1 Ministry of Health in China, and involved more than 2,500 attempts over the course of  
2 27 minutes.

3 48. On or about June 20, 2009, Solid Oak employees received a series of  
4 individually customized Trojan emails originating from sources in China posing as  
5 Solid Oak employees. These emails were designed to retrieve information stored on  
6 Solid Oak's computers and send it back to their source, and to install foreign items on  
7 Solid Oak's computers. Solid Oak is still investigating whether any of these attempts  
8 was successful, and what information may have been compromised.

9 The Common Scheme

10 49. As stated above, Defendants Jinhui and Dazheng (collectively,  
11 "Defendant Developers") entered into an agreement with Defendant PRC providing  
12 PRC with a one-year license to distribute the Green Dam software. Defendant PRC  
13 then entered into agreements with Defendants Sony, Lenovo, Toshiba, Acer, Asus,  
14 BenQ, Haier and Does 1 through 10 (collectively, "Defendant Manufacturers")  
15 providing for the distribution of Green Dam by Defendant Manufacturers in China  
16 (including as part of the Rural Subsidy Program). On information and belief,  
17 Defendant PRC has charged substantial fees to the Defendant Manufacturers for use  
18 of the Green Dam program.

19 50. In addition, Defendant Manufacturers entered into contracts with  
20 Defendant Developers, pursuant to which said Defendant Manufacturers have been  
21 designated as official distributors of the Green Dam product and Defendant  
22 Developers are their designated suppliers of content-filtering software. Defendant  
23 Manufacturers have requested and obtained indemnity for violations of law relating to  
24 the Green Dam program from Defendant Developers. Such indemnity, however, has  
25 no bearing on Defendant Manufacturers' liability for violations of law relating to the  
26 Green Dam program.

27 51. On or about March 11, 2009, Defendant PRC held a symposium on the  
28 Green Dam program at MIIT headquarters in Beijing ("Green Dam Symposium"). In

1 addition to the MIIT, participants included the Defendant Developers and  
2 representatives of each of the major computer manufacturers (including Defendant  
3 Manufacturers). The meeting agenda was to finalize a working plan for the  
4 proliferation of the Green Dam program and to discuss plans for installing Green Dam  
5 on computers throughout China.

6 52. Each of the Defendant Manufacturers has willingly participated in the  
7 PRC and Defendant Developers' scheme to proliferate the illegal software throughout  
8 China.

9 53. Each of the Defendant Manufacturers commenced distribution of the  
10 Green Dam software no later than on or about March 1, 2009.

11 54. Each of the Defendants has had actual knowledge of the violations at  
12 issue herein since early-June 2009 at the latest, when the highly publicized  
13 infringement of Plaintiff's software by the Green Dam program was reported  
14 extensively in the press.

15 55. On June 15, 2009, Plaintiff sent cease and desist letters giving express  
16 notice of the ongoing infringements to the following Defendants: Sony, Lenovo,  
17 Toshiba, Acer, Asus and BenQ.

18 56. On information and belief, each of the Defendant Manufacturers  
19 continued to distribute the Green Dam program even after the widespread press  
20 reports of infringement in early June and (where applicable) even after being sent the  
21 June 15, 2009 cease and desist letter. According to press reports, most or all of the  
22 Defendant Manufacturers had ceased distributing the Green Dam program by mid to  
23 late September 2009.

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**FIRST CLAIM FOR RELIEF**  
**MISAPPROPRIATION OF TRADE SECRETS**  
**(violation of Cal. Civ. Code § 3426.1)**  
**[Against All Defendants]**

57. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 56 as if fully set forth herein.

58. Each and every Defendant, and Does 1 through 10, inclusive, have acted in concert, conspired together, and engaged in conduct constituting misappropriation of trade secrets pursuant to California's Uniform Trade Secrets Act, Cal. Civ. Code § 3426, *et seq.*

59. Plaintiff's Trade Secrets embedded in the CYBERSitter computer program constitute valuable information from which Plaintiff derives independent economic value because such Trade Secrets are not generally known to the public, and are not readily ascertainable through proper means by the public. The Trade Secrets include CYBERSitter's proprietary content filters, which are encrypted so as to prevent their disclosure to third parties and competitors.

60. Defendants Jinhui and Dazheng obtained Plaintiff's Trade Secrets through improper means. Defendant PRC knew of and gave support to Defendants Jinhui and Dazheng in their unauthorized misappropriation and exploitation of Plaintiff's Trade Secrets.

61. Each of the Defendant Manufacturers acquired Plaintiff's Trade Secrets through Defendants Jinhui, Dazheng and/or PRC. Defendant Manufacturers had actual or constructive knowledge no later than early-June 2009 that Jinhui and Dazheng had acquired the Trade Secrets through improper means and without Plaintiff's authorization. Each and every Defendant Manufacturer used the Trade Secrets by distributing the Green Dam software. At the time that each Defendant Manufacturer distributed the Green Dam software, it knew or had reason to know that

1 the Trade Secrets were obtained through the unauthorized decryption of the  
2 CYBERSitter program.

3 62. Defendants each possessed knowledge that Plaintiff is and was a United  
4 States company and that their illegal acts would therefore cause injury within the  
5 United States and within California. Plaintiff's Trade Secrets were misappropriated  
6 from within the United States and/or downloaded from servers within the United  
7 States.

8 63. As a direct and proximate result of Defendants' unlawful  
9 misappropriation of Plaintiff's Trade Secrets, Plaintiff has been deprived of money,  
10 such as licensing fees for the use of Plaintiff's Trade Secrets that would otherwise  
11 have been due to Plaintiff, and Defendants have been unjustly enriched by their  
12 misappropriation of Plaintiff's Trade Secrets. Plaintiff is thus entitled to damages for  
13 its losses and restitution of Defendants' profits attributable to the misappropriation of  
14 Plaintiff's Trade Secrets, in amounts to be proven at trial which are not currently  
15 ascertainable. Cal. Civ. Code. § 3426.3(a). In the alternative, Plaintiff is entitled to a  
16 "reasonable royalty" for Defendant's use of Plaintiff's Trade Secrets, in an amount to  
17 be proven at trial which is not currently ascertainable. *Id.* If necessary, Plaintiff will  
18 seek leave to amend this complaint to state the full amount of such sums when such  
19 amounts have been ascertained.

20 64. As a direct and proximate result of the foregoing acts and conduct,  
21 Plaintiff has sustained and will continue to sustain substantial, immediate, and  
22 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed  
23 and believes and on that basis avers that unless enjoined and restrained by this Court,  
24 Defendants will continue to engage in conduct violative of the Uniform Trade Secrets  
25 Act. Plaintiff is entitled to preliminary and permanent injunctive relief.

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**SECOND CLAIM FOR RELIEF**

**UNFAIR COMPETITION**

**(In Violation of California Business and Professions Code §§ 17200 et seq.**

**and 18 U.S.C. §§ 1831, 1832)**

**[Against All Defendants]**

65. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 64 as if fully set forth herein.

66. Each and every Defendant and Does 1 through 10, inclusive, have acted in concert, conspired together, and engaged in conduct constituting an illegal business practice prohibited by the California Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* (the "UCL"), by and through their violations of Section 1832 of the federal Economic Espionage Act, entitled "Theft of Trade Secrets" (18 U.S.C. § 1832). Section 1832 of the Act makes certain types of trade secret theft a federal crime. While the Act does not, by itself, create a private cause of action, violations of the Economic Espionage Act may serve as predicate acts giving rise to a private right of action for unlawful business practices under the UCL. *See* Cal. Bus. & Prof. Code §§ 17200, *et seq.*

67. In addition, each and every Defendant and Does 1 through 10, inclusive, have acted in concert, conspired together, and engaged in conduct constituting an illegal business practice prohibited by the UCL by and through their violations of Section 1831 of the federal Economic Espionage Act, entitled "Economic Espionage" (18 U.S.C. § 1831). Section 1831 of the Act makes certain types of trade secret theft benefitting a foreign government, instrumentality, agent or power a federal crime. While the Act does not, by itself, create a private cause of action, violations of the Economic Espionage Act may serve as predicate acts giving rise to a private right of action for unlawful business practices under the UCL. *See* Cal. Bus. & Prof. Code §§ 17200, *et seq.*

1           68. Plaintiff's computer program, CYBERSitter, is produced for and placed in  
2 interstate commerce and foreign commerce.

3           69. Plaintiff's Trade Secrets embedded in the CYBERSitter computer  
4 program constitute valuable information from which Plaintiff derives independent  
5 economic value because such Trade Secrets are not generally known to the public, and  
6 are not readily ascertainable through proper means by the public. The Trade Secrets  
7 include CYBERSitter's content filters, which are encrypted to prevent their disclosure  
8 to third parties and competitors.

9           70. All Defendants obtained Plaintiff's Trade Secrets through wrongful  
10 means without Plaintiff's authorization. All Defendants knew or became aware that  
11 the Trade Secrets were obtained through wrongful means without Plaintiff's  
12 authorization, and that the use of the Trade Secrets by all Defendants was without  
13 Plaintiff's authorization.

14           71. Defendants knew that the Trade Secrets were proprietary and belonged to  
15 Plaintiff. Defendants nevertheless intended to convert the Trade Secrets for their own  
16 economic benefit. Defendants knew that such conversion of Plaintiff's Trade Secrets  
17 would injure Plaintiff. Defendants nevertheless used and exploited Plaintiff's Trade  
18 Secrets for their own economic benefit.

19           72. All Defendants knew that their unauthorized possession, exploitation,  
20 copying and dissemination of Plaintiff's Trade Secrets would benefit a foreign  
21 government, namely Defendant PRC. Defendant Manufacturers, Jinhui, Dazheng and  
22 Does 1 through 10 conspired together with Defendant PRC to misappropriate and  
23 exploit Plaintiff's Trade Secrets without Plaintiff's authorization. Indeed, Plaintiff is  
24 informed and believes that Defendant Manufacturers paid substantial sums to  
25 Defendant PRC to exploit Plaintiff's Trade Secrets.

26           73. The aforementioned illegal acts occurred in part within the territorial  
27 boundaries of the United States and/or its territories. Plaintiff's Trade Secrets were  
28 taken from within the United States and/or downloaded from servers within the

1 United States. In addition, Defendants each possessed knowledge that Plaintiff is and  
2 was a United States company and that their illegal acts would therefore cause injury  
3 within the United States and within California.

4 74. Defendants' unlawful, unfair, and/or deceptive acts were willful, in  
5 disregard of and with indifference to Plaintiff's rights.

6 75. As a direct and proximate result of Defendants' unlawful acts and  
7 practices, Plaintiff has been deprived of money, such as licensing fees for the use of  
8 Plaintiff's Trade Secrets that would otherwise have been due to Plaintiff. Plaintiff is  
9 thus entitled to restitution of such sums as would otherwise have been owed or paid to  
10 Plaintiff, in amounts to be proven at trial which are not currently ascertainable. If  
11 necessary, Plaintiff will seek leave to amend this complaint to state the full amount of  
12 such sums when such amounts have been ascertained.

13 76. As a direct and proximate result of the foregoing acts and conduct,  
14 Plaintiff has sustained and will continue to sustain substantial, immediate, and  
15 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed  
16 and believes and on that basis avers that unless enjoined and restrained by this Court,  
17 Defendants will continue to engage in conduct violative of California Business and  
18 Professions Code, Section 17200. Plaintiff is entitled to preliminary and permanent  
19 injunctive relief.

20 **THIRD CLAIM FOR RELIEF**

21 **COPYRIGHT INFRINGEMENT**

22 **(In Violation of the Copyright Act of the United States)**

23 **[Against Defendants PRC, Jinhui, Dazheng, and Does 1-10]**

24 77. Plaintiff repeats and realleges the allegations made in paragraphs 1  
25 through 76 as if fully set forth herein.

26 78. Plaintiff's CYBERSitter program and the various versions thereof are  
27 copyrighted works ("Copyrighted Works"). Plaintiff has applied for and obtained  
28 Certificates of Copyright Registration duly issued by the Register of Copyright for the

1 Copyrighted Works. Under the U.S. Copyright Act, Plaintiff has the exclusive rights,  
2 *inter alia*, to reproduce the Copyrighted Works, to prepare derivative works based  
3 upon the Copyrighted Works, and to distribute copies of the Copyrighted Works to the  
4 public. *See* 17 U.S.C. §§ 106(1), (2), (3).

5 79. Through their conduct averred herein, Defendants PRC, Jinhui, Dazheng,  
6 and Does 1 through 10 have directly infringed Plaintiff's copyrights in the  
7 Copyrighted Works by reproducing, adapting, and/or distributing works embodying  
8 the Copyrighted Works without authorization in violation of the Copyright Act. *See*  
9 17 U.S.C. §§ 106, 501. Defendants PRC, Jinhui, Dazheng, and Does 1 through 10  
10 have caused copies Plaintiff's Copyrighted Works to be distributed within the United  
11 States, including via the Internet.

12 80. Defendants PRC, Jinhui, Dazheng, and Does 1 through 10 have the right  
13 and ability to supervise and control ongoing infringements by third parties, including  
14 infringements by those who – with the authorization, approval, and consent of said  
15 Defendants – distribute and cause copies to be made of Plaintiff's Copyrighted Works  
16 via the Internet in the United States and elsewhere. Said Defendants have refused and  
17 failed to exercise supervision and control over said third parties, and said Defendants  
18 also reap a direct pecuniary benefit from the infringement. As a direct and proximate  
19 result of said Defendants' actions, third parties have infringed Plaintiff's copyrights in  
20 the Copyrighted Works, including by reproducing, adapting, distributing, and publicly  
21 displaying the Copyrighted Works.

22 81. In addition, Defendants PRC, Jinhui, Dazheng, and Does 1 through 10  
23 have knowingly facilitated the unauthorized copying and dissemination of Plaintiff's  
24 Copyrighted Works. Said Defendants have materially contributed to the infringing  
25 conduct of third parties, *inter alia*, because said Defendants have knowingly  
26 authorized, approved of, and consented to third party distribution and copying of  
27 Plaintiff's Copyrighted Works via the Internet in the United States and elsewhere, and  
28

1 said Defendants each possessed actual or constructive knowledge of the violations at  
2 issue.

3 82. The aforementioned infringing acts occurred in whole or in part within  
4 the territorial boundaries of the United States and/or its territories.

5 83. Each infringement by Defendants in and to the Copyrighted Works  
6 constitutes a separate and distinct act of infringement.

7 84. Defendants' acts of infringement were knowing, willful, negligent, in  
8 disregard of and with indifference to the rights of Plaintiff.

9 85. As a direct and proximate result of the infringements by Defendants,  
10 Plaintiff is entitled to its damages and Defendants' profits, each in amounts to be  
11 proven at trial.

12 86. Alternatively, Plaintiff is entitled to the maximum statutory damages in  
13 the amount of \$150,000 with respect to each work infringed, or for such other  
14 amounts as may be proper. *See* 17 U.S.C. § 504(c).

15 87. Plaintiff is further entitled to its attorneys' fees and costs pursuant to 17  
16 U.S.C. § 505.

17 88. As a direct and proximate result of the foregoing acts and conduct,  
18 Plaintiff has sustained and will continue to sustain substantial, immediate, and  
19 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed  
20 and believes and on that basis avers that unless enjoined and restrained by this Court,  
21 Defendants will continue to infringe Plaintiff's rights in the Copyrighted Works.  
22 Plaintiff is entitled to preliminary and permanent injunctive relief.

23 **FOURTH CLAIM FOR RELIEF**

24 **COPYRIGHT INFRINGEMENT**

25 **(In Violation of the Copyright Laws of the People's Republic of China)**

26 **[Against All Defendants]**

27 89. Plaintiff repeats and realleges the allegations made in paragraphs 1  
28 through 88 as if fully set forth herein.

1           90. Plaintiff's Copyrighted Works are protected under the Copyright Law of  
2 the People's Republic of China ("PRC Copyright Law") and the Regulations for the  
3 Protection of Computer Software of the People's Republic of China ("PRC Software  
4 Regulations"). Plaintiff is the owner of the Copyrighted Works under Chinese law.  
5 See PRC Copyright Law, Arts. 9, 11; PRC Software Regulations, Art. 13. The  
6 People's Republic of China is a signatory to the Berne Convention and has adopted  
7 laws that comply with the minimum standards set by the Berne Convention.  
8 Accordingly, because Plaintiff's Copyrighted Works are foreign works under Chinese  
9 copyright law, those works are entitled to full protection of the Chinese copyright laws  
10 from the moment they are created without any need for registration in China (or  
11 elsewhere). See PRC Copyright Law, Art. 2; PRC Software Regulations, Arts. 5, 7,  
12 14.

13           91. Chinese copyright law protects both the economic rights and moral rights  
14 of the owner of copyrighted works, including computer software and written works.  
15 See PRC Copyright Law, Art. 3; PRC Software Regulations, Art. 1. Under Chinese  
16 copyright law (including both the PRC Copyright Law and the PRC Software  
17 Regulations), Plaintiff has the exclusive rights, *inter alia*, to reproduce, publish,  
18 distribute, disseminate on information networks, lease, and make available to the  
19 public the Copyrighted Works, as well as the moral right to attribution of authorship  
20 of the Copyrighted Works. See PRC Software Regulations, Art. 8; PRC Copyright  
21 Law, Art. 10 (rights), Arts. 46-47 (infringing acts).

22           92. Through their conduct averred herein, Defendants have infringed  
23 Plaintiff's copyrights in the Copyrighted Works by reproducing, publishing,  
24 distributing, disseminating on information networks, leasing, and making available to  
25 the public works embodying the Copyrighted Works without authorization, and have  
26 not attributed authorship of the Copyrighted Works to Plaintiff, all in violation of  
27 Plaintiff's rights under Chinese copyright law. See PRC Copyright Law, Arts. 46-47;  
28 PRC Software Regulations, Arts. 23-24.



93. Through their conduct averred herein, Defendants are jointly liable under Chinese law for the infringing acts of third parties to which they have materially contributed and/or caused, including the infringement of Plaintiff's copyrights in the Copyrighted Works by reproducing, publishing, distributing, disseminating on information networks, leasing, and making available to the public works embodying the Copyrighted Works without authorization, and by failing to attribute authorship of the Copyrighted Works to Plaintiff, all in violation of Plaintiff's rights under Chinese copyright law. *See* PRC Copyright Law, Arts. 46-47; PRC Software Regulations, Arts. 23-24; *see also Shanghai Push Sound Music & Entertainment Co., Ltd. v. Beijing Kuro Music Software Development Co., Ltd., et al.*, Case No. 13739 (Beijing Second Interim Ct., Dec. 19, 2006) (holding a Napster-like peer-to-peer file sharing service liable under traditional joint liability principles) available at [http://bjgy.chinacourt.org/public/detail.php?id=43572&k\\_w](http://bjgy.chinacourt.org/public/detail.php?id=43572&k_w). As a direct and proximate result of Defendants' actions, third parties have infringed Plaintiff's copyrights in the Copyrighted Works, and Defendants have caused third parties to infringe Plaintiff's copyrights in the Copyrighted Works in the manner stated above in violation of Chinese copyright law. *See* PRC Copyright Law, Arts. 46-47; PRC Software Regulations, Arts. 23-24.

94. Defendants have acted in concert with third parties to violate Plaintiff's rights. Defendants have the right and ability to supervise and control ongoing infringements by third parties, including: (a) infringements by those who – with the authorization, approval, direction and consent of Defendants PRC, Jinhui, Dazheng, and Does 1-10 – distribute and cause copies to be made of Plaintiff's Copyrighted Works via the Internet in China and elsewhere, and (b) infringements by those who – with the authorization, approval, direction and consent of Defendants – make, package, install, or otherwise distribute unauthorized copies of Plaintiff's Copyrighted Works with Defendant Manufacturers' computers (*viz.*, Sony, Lenovo, Toshiba, Acer, Asus, BenQ, Haier and Does 1-10). Defendants have refused and failed to exercise

1 supervision and control over said third parties, and Defendants reap a direct pecuniary  
2 benefit from the infringement of said third parties. Defendant Manufacturers have a  
3 duty to ensure that the programs that are sold and distributed with their computers are  
4 not stolen in violation of the copyrights of others. Defendants failed to meet this  
5 obligation here and instead turned a blind eye to third party violations that they could  
6 reasonably anticipate would occur. In addition, while knowledge is not required for a  
7 violation of Chinese copyright law, each of the Defendants has had knowledge of the  
8 violations at issue since early-June 2009 at the latest.

9 95. Through their conduct averred herein, Defendants PRC, Jinhui, Dazheng  
10 and Does 1 through 10 have infringed Plaintiff's rights in its Copyrighted Works by  
11 "intentionally circumventing or destroying technological measures [*viz.*, Plaintiff's  
12 encryption methods] taken by a right holder for protecting the copyright or copyright-  
13 related rights in his work ... without the permission of the copyright owner, or the  
14 owner of the copyright-related rights" in violation of Chinese Copyright Law. *See*  
15 PRC Copyright Law, Art. 47(6).

16 96. The aforementioned infringing acts occurred in whole or in part within  
17 the territorial boundaries of the People's Republic of China and/or its territories.

18 97. Each infringement by Defendants in and to the Copyrighted Works  
19 constitutes a separate and distinct act of infringement.

20 98. Defendants' acts of infringement were knowing, willful, negligent, in  
21 disregard of and with indifference to the rights of Plaintiff.

22 99. As a direct and proximate result of the infringements by Defendants,  
23 Plaintiff is entitled to its damages or to Defendants' profits, each in amounts to be  
24 proven at trial. *See* PRC Copyright Law, Art. 48; PRC Software Regulations, Art. 25.

25 100. Alternatively, Plaintiff is entitled to the maximum statutory damages in  
26 the amount of 500,000 Yuan (approximately 73,000 U.S. dollars) per infringement, or  
27 for such other amounts as may be proper under the PRC Copyright Law and PRC  
28

1 Software Regulations. *See* PRC Copyright Law, Art. 48; PRC Software Regulations,  
2 Art. 25.

3 101. Plaintiff is further entitled to its attorneys' fees and costs.

4 102. As a direct and proximate result of the foregoing acts and conduct,  
5 Plaintiff has sustained and will continue to sustain substantial, immediate, and  
6 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed  
7 and believes and on that basis avers that unless enjoined and restrained by this Court,  
8 Defendants will continue to infringe Plaintiff's rights in the Copyrighted Works.  
9 Plaintiff is entitled to preliminary and permanent injunctive relief. *See* PRC  
10 Copyright Law, Art. 49; PRC Software Regulations, Art. 26.

11 **FIFTH CLAIM FOR RELIEF**

12 **COPYRIGHT INFRINGEMENT**

13 **(In Violation of the Copyright Laws of Japan)**

14 **[Against Defendants PRC, Jinhui, Dazheng, Sony, Toshiba, and Does 1-10]**

15 103. Plaintiff repeats and realleges the allegations made in paragraphs 1  
16 through 102 as if fully set forth herein.

17 104. Plaintiff's Copyrighted Works are protected under Japan's Copyright Act  
18 ("JCA"). Plaintiff is the owner of the Copyrighted Works, which constitute "works of  
19 authorship" – in particular, "computer program works" – protected under Japanese  
20 law. JCA, Arts. 10(1), 6(3), 14-15; *see also* Art. 2(1) (defining "computer program"  
21 as "an expression of a combination of instructions to cause a computer to function in  
22 order to be able to obtain a certain result"). Japan is a signatory to the Berne  
23 Convention and has adopted laws that comply with the minimum standards set by the  
24 Berne Convention. Accordingly, because Plaintiff's Copyrighted Works are foreign  
25 works under Japanese copyright law, those works are entitled to full protection of the  
26 Japanese copyright laws from the moment they are created without any need for  
27 registration in Japan (or elsewhere). *See* JCA, Arts. 17(2), 51(1).  
28

1 105. Japanese copyright law protects both the economic rights and moral  
2 rights of the author of copyrighted works, including "computer program works" and  
3 "literary works." *See* JCA, Arts. 10, 18-28. Under Japanese copyright law, Plaintiff  
4 has the exclusive rights, *inter alia*, to reproduce, distribute, transfer ownership, rent,  
5 adapt, offer and make available to the public the Copyrighted Works, as well as the  
6 moral right to attribution of authorship and to maintain the integrity of the  
7 Copyrighted Works. *See* JCA, Arts. 18-28.

8 106. Through their conduct averred herein, Defendants PRC, Jinhui, Dazheng,  
9 Sony, Toshiba and Does 1 through 10 have infringed Plaintiff's copyrights in the  
10 Copyrighted Works by reproducing, distributing, transferring ownership, renting,  
11 adapting, and offering and making available to the public works embodying the  
12 Copyrighted Works without authorization, and have not attributed authorship or  
13 maintained the integrity of the Copyrighted Works to Plaintiff, all in violation of  
14 Plaintiff's rights under Japanese copyright law. *See* JCA, Arts. 18-28.

15 107. Through their conduct averred herein, said Defendants are jointly liable  
16 under Japanese law for the infringing acts of third parties to which they have  
17 materially contributed and/or caused, including the infringement of Plaintiff's  
18 copyrights in the Copyrighted Works by reproducing, distributing, transferring  
19 ownership, renting, adapting, and offering and making available to the public works  
20 embodying the Copyrighted Works without authorization, and by failing to attribute  
21 authorship of the Copyrighted Works to Plaintiff and to maintain their integrity, all in  
22 violation of Plaintiff's rights under Japanese copyright law. *See* JCA, Arts. 18-28. As  
23 a direct and proximate result of said Defendants' actions, third parties have infringed  
24 Plaintiff's copyrights in the Copyrighted Works, and said Defendants have caused  
25 third parties to infringe Plaintiff's copyrights in the Copyrighted Works in the manner  
26 stated above in violation of Japanese copyright law. *See* JCA, Arts. 18-28.

27 108. The aforementioned infringing acts occurred in whole or in part within  
28 the territorial boundaries of Japan.

1 109. Each infringement by said Defendants in and to the Copyrighted Works  
2 constitutes a separate and distinct act of infringement.

3 110. Said Defendants' acts of infringement were knowing, willful, negligent,  
4 in disregard of and with indifference to the rights of Plaintiff.

5 111. As a direct and proximate result of the infringements by said Defendants,  
6 Plaintiff is entitled to its damages and/or to said Defendants' profits and/or to a  
7 reasonable royalty, each in amounts to be proven at trial. *See* JCA, Arts. 114(1)-(3),  
8 114-5.

9 112. Plaintiff is further entitled to its attorneys' fees and costs.

10 113. As a direct and proximate result of the foregoing acts and conduct,  
11 Plaintiff has sustained and will continue to sustain substantial, immediate, and  
12 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed  
13 and believes and on that basis avers that unless enjoined and restrained by this Court,  
14 said Defendants will continue to infringe Plaintiff's rights in the Copyrighted Works.  
15 Plaintiff is entitled to preliminary and permanent injunctive relief. *See* JCA, Arts.  
16 112, 115.

17 **SIXTH CLAIM FOR RELIEF**

18 **COPYRIGHT INFRINGEMENT**

19 **(In Violation of the Copyright Laws of Taiwan)**

20 **[Against Defendants PRC, Jinhui, Dazheng, Acer, Asus, BenQ, and Does 1-10]**

21 114. Plaintiff repeats and realleges the allegations made in paragraphs 1  
22 through 113 as if fully set forth herein.

23 115. Plaintiff's Copyrighted Works are protected under the Taiwan Copyright  
24 Act ("TCA"). Plaintiff is the author of the Copyrighted Works under Taiwanese law.  
25 *See* TCA, Arts. 3, 11-12. While Taiwan is not a formal signatory to the Berne  
26 Convention, it has adopted laws that comply with the minimum standards set by the  
27 Berne Convention. Plaintiff's Copyrighted Works are foreign works under Taiwanese  
28 copyright law, entitled to full protection of the Taiwanese copyright laws from the

1 moment they are created without any need for registration in Taiwan (or elsewhere).  
2 *See* TCA, Arts. 4, 10.

3 116. Taiwanese copyright law protects both the economic rights and moral  
4 rights of the owner of copyrighted works, including "computer programs" and  
5 "literary works." *See* TCA, Art. 5. Under Taiwanese copyright law, Plaintiff has the  
6 exclusive rights, *inter alia*, to reproduce, distribute, publicly transmit, adapt, and lease  
7 the Copyrighted Works, as well as the moral rights to attribution of authorship, public  
8 release, and prevention of alteration of the Copyrighted Works. *See* TCA, Arts. 15-17  
9 (moral rights), Arts. 22-29 (economic rights).

10 117. Through their conduct averred herein, Defendants PRC, Jinhui, Dazheng,  
11 Acer, Asus, BenQ, and Does 1 through 10 have infringed Plaintiff's copyrights in the  
12 Copyrighted Works by reproducing, distributing, publicly transmitting, adapting and  
13 leasing works embodying the Copyrighted Works without authorization, and have  
14 publicly released, have not attributed authorship and have altered without  
15 authorization the Copyrighted Works to Plaintiff, all in violation of Plaintiff's rights  
16 under Taiwanese copyright law. *See* TCA, Arts. 15-17 (moral rights), Arts. 22-29  
17 (economic rights).

18 118. Through their conduct averred herein, said Defendants are jointly liable  
19 under Taiwanese law for the infringing acts of third parties to which they have  
20 materially contributed and/or caused, including the infringement of Plaintiff's  
21 copyrights in the Copyrighted Works by reproducing, distributing, publicly  
22 transmitting, adapting and leasing works embodying the Copyrighted Works without  
23 authorization, and by publicly releasing, failing to attribute authorship, and altering  
24 without authorization the Copyrighted Works to Plaintiff, all in violation of Plaintiff's  
25 rights under Taiwanese copyright law. *See* TCA, Arts. 15-17 (moral rights), Arts. 22-  
26 29 (economic rights). As a direct and proximate result of said Defendants' actions,  
27 third parties have infringed Plaintiff's copyrights in the Copyrighted Works, and said  
28 Defendants have caused third parties to infringe Plaintiff's copyrights in the



1 Copyrighted Works in the manner stated above in violation of Chinese copyright law.  
2 *See id.*

3 119. The aforementioned infringing acts occurred in whole or in part within  
4 the territorial boundaries of Taiwan.

5 120. Each infringement by said Defendants in and to the Copyrighted Works  
6 constitutes a separate and distinct act of infringement.

7 121. Said Defendants' acts of infringement were knowing, willful, negligent,  
8 in disregard of and with indifference to the rights of Plaintiff.

9 122. As a direct and proximate result of the infringements by said Defendants,  
10 Plaintiff is entitled to its damages and to said Defendants' profits, each in amounts to  
11 be proven at trial.

12 123. Plaintiff is further entitled to its attorneys' fees and costs.

13 124. As a direct and proximate result of the foregoing acts and conduct,  
14 Plaintiff has sustained and will continue to sustain substantial, immediate, and  
15 irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed  
16 and believes and on that basis avers that unless enjoined and restrained by this Court,  
17 said Defendants will continue to infringe Plaintiff's rights in the Copyrighted Works.  
18 Plaintiff is entitled to preliminary and permanent injunctive relief.

19 **SEVENTH CLAIM FOR RELIEF**

20 **CIVIL CONSPIRACY**

21 **[Against All Defendants]**

22 125. Plaintiff repeats and realleges the allegations made in paragraphs 1  
23 through 124 as if fully set forth herein.

24 126. Defendant Manufacturers and Does 1 through 10, inclusive, conspired,  
25 colluded, agreed with, and aided and abetted Defendants PRC, Jinhui, and Dazheng at  
26 all relevant times. Through their actions and participation in furtherance of the Green  
27 Dam Initiative, Defendant Manufacturers, Defendant Jinhui, Defendant Dazheng, and  
28

1 Defendant PRC implicitly and/or explicitly agreed to participate and did participate in  
2 an unlawful plan which included misappropriation and theft of trade secrets, violation  
3 of unfair competition laws, and copyright infringement.

4 127. Defendants' common scheme – viz., the Green Dam Initiative – involved  
5 two overlapping components which eventually became indistinguishable from each  
6 other: participation in the PRC's seemingly legal (albeit surreptitious) plan to have  
7 Green Dam installed on every computer in China, and the illegal infringement, theft  
8 and distribution of Plaintiff's intellectual property and trade secrets. Defendant  
9 Manufacturers, Defendant Suppliers, and Defendant PRC all willingly participated in  
10 this common scheme both before and after the illegal aspects of the scheme became  
11 apparent.

12 128. In March 2009, Defendant PRC sponsored a Green Dam Symposium at  
13 MIIT offices in Beijing. The express purpose of the Symposium was to develop a  
14 plan to proliferate the Green Dam program on computers throughout China.  
15 Representatives of Defendant Manufacturers, Defendant Developers and Defendant  
16 PRC all attended and participated in the Green Dam Symposium.

17 129. Defendant PRC, Defendant Jinhui, Defendant Dazheng and Defendant  
18 Manufacturers also entered into contractual agreements with each other in furtherance  
19 of the common scheme, providing for the distribution of the Green Dam program  
20 throughout China and elsewhere.

21 130. During their initial participation in the Green Dam Initiative, the  
22 Defendant Manufacturers may have been unaware that the Green Dam Initiative had  
23 an illegal component: the illegal theft, misappropriation and proliferation of Plaintiff's  
24 intellectual property and trade secrets. But while at first the illegal theft and  
25 infringement of Plaintiff's CYBERSitter software may have been limited to the  
26 Defendant Developers and the PRC, no later than early June 2009, Defendant  
27 Manufacturers had knowledge of the illegal components of the common scheme and,  
28 despite this knowledge, thereafter continued to copy and distribute Green Dam and

1 otherwise promote and participate in the Green Dam Initiative. At this point, the legal  
2 and illegal aspects of the common scheme merged and became indistinguishable.

3 131. As a result of the foregoing, each of the Defendants is liable for the  
4 illegal acts (as alleged herein) of each of the other Defendants in furtherance of their  
5 common plan and scheme to proliferate the illegal Green Dam program throughout  
6 China.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Solid Oak respectfully requests that the Court enter judgment  
9 against Defendants as follows:

10 A. For an award of Plaintiff's damages and unjust enrichment for  
11 Defendant's misappropriation of trade secrets in an amount to be ascertained at trial  
12 pursuant to Cal. Civ. Code § 3426.3(a), or in the alternative for a reasonable royalty in  
13 an amount to be ascertained at trial, but in no event less than \$2,257,175,000,  
14 representing the Chinese government's stated figures of more than 56.5 million  
15 unlicensed copies distributed on computers, in schools, and on the Internet (as of early  
16 June 2009) multiplied by \$39.95 per copy, pursuant to Cal. Civ. Code § 3426.3(b).

17 B. For an award of Plaintiff's damages under the copyright laws of the  
18 United States, China, Japan and Taiwan, in an amount to be ascertained at trial, but in  
19 no event less than \$2,257,175,000, and in addition or in the alternative for the  
20 following:

21 a. For an award of Plaintiff's damages and Defendants' profits, each in  
22 amounts to be ascertained at trial, or, alternatively, for maximum  
23 statutory damages in the amount of \$150,000 with respect to each  
24 copyrighted work infringed either directly or indirectly, and/or for such  
25 other amounts as may be proper under the Copyright Act of the United  
26 States;

27 b. For an award of Plaintiff's damages or Defendants' profits, each in  
28 amounts to be ascertained at trial, or, alternatively, for maximum

1 statutory damages in the amount of 500,000 Yuan (or approximately  
2 73,000 U.S. dollars) per direct or indirect infringement, and/or for such  
3 other amounts as may be proper under the Copyright Law and Software  
4 Regulations of the People's Republic of China.

5 c. For an award of Plaintiff's damages and/or Defendants' profits and/or a  
6 reasonable royalty, each in amounts to be ascertained at trial, and/or for  
7 such other amounts as may be proper under the Copyright Act of Japan.

8 d. For an award of Plaintiff's damages and/or for Defendants' profits, each  
9 in amounts to be ascertained at trial, and/or for such other amounts as  
10 may be proper under the Copyright Act of Taiwan.

11 C. For restitution of such sums as would otherwise have been owed or paid  
12 to Plaintiff absent Defendants' violations of law, in an amount to be ascertained at  
13 trial;

14 D. For exemplary damages against Defendant PRC and Defendant  
15 Developers and in favor of Plaintiff pursuant to Cal. Civ. Code § 3426.3(c) in the sum  
16 of twice the amount awarded for restitution or a reasonable royalty by reason of  
17 Defendants' willful and malicious improper appropriation of Plaintiff's Trade Secrets;

18 E. For preliminary and permanent injunctive relief;

19 F. For prejudgment interest;


20 G. For Plaintiff's attorneys fees and costs of suit incurred in this action; and

21 H. For such other and further relief as the Court may deem just and proper.

22 DATED: September 27, 2010

GIPSON HOFFMAN & PANCIONE  
A Professional Corporation  
GREGORY A. FAYER  
ELLIOT B. GIPSON

23  
24  
25  
26 By

  
GREGORY A. FAYER  
Attorneys for Plaintiff CYBERSitter, LLC  
d/b/a Solid Oak Software


**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a trial by jury.

DATED: September 27, 2010

GIPSON HOFFMAN & PANCIONE  
A Professional Corporation  
GREGORY A. FAYER  
ELLIOT B. GIPSON

By

  
GREGORY A. FAYER  
Attorneys for Plaintiff CYBERSitter, LLC  
d/b/a Solid Oak Software

GIPSON HOFFMAN & PANCIONE  
A PROFESSIONAL CORPORATION

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 1901 Avenue of the Stars, Suite 1100, Los Angeles, California 90067-6002.

On September 27, 2010, I served the document described as: **FIRST AMENDED COMPLAINT FOR MISAPPROPRIATION OF TRADE SECRETS; UNFAIR COMPETITION; COPYRIGHT INFRINGEMENT; AND CIVIL CONSPIRACY; DEMAND FOR JURY TRIAL** on all interested parties in this action by:

☒ placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as stated below:

**SEE ATTACHED SERVICE LIST**

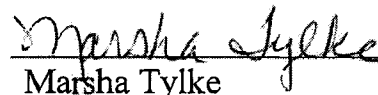
☒ **BY MAIL:** I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY ELECTRONIC MAIL:** By electronically mailing a true and correct copy through Gipson Hoffman & Pancione's electronic mail system to the e-mail address(es) set forth as stated on the attached service list. [C.C.P. § 1010.6].

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ [Federal] I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 27, 2010, at Los Angeles, California.

  
Marsha Tylke



**SERVICE LIST**

*CYBERsitter, LLC v. The People's Republic of China, et al.*  
CASE NO. CV10-0038 JST (SHx)

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